

BEFORE

THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 95-823-T - ORDER NO. 97-627

JULY 29, 1997

IN RE: Application of Carl's Inc. d/b/a ) ORDER  
Apartment Movers, Etc., 5101 Ashley ) GRANTING  
Phosphate Road, Suite 104, North ) AMENDMENT OF  
Charleston, SC 29418, to Amend Class ) CERTIFICATE  
E Certificate of Public Convenience )  
and Necessity No. 9668. )

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Application of Carl's Inc. d/b/a Apartment Movers, Etc. ("Apartment Movers" or the "Applicant") to amend its Class E Certificate of Public Convenience and Necessity. Apartment Movers was granted authority to operate as a mover of household goods by Commission Order No. 95-1554 (dated September 20, 1995) and currently holds Certificate of Public Convenience and Necessity No. 9668. The present scope of authority held by Apartment Movers reads as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1): BETWEEN  
POINTS AND PLACES IN SOUTH CAROLINA

RESTRICTED TO: TRANSPORTATION IN VANS OF FIFTEEN (15)  
FEET WITH A MAXIMUM CAPACITY OF 700 CUBIC FEET.

Apartment Movers requests that its Certificate of Public Convenience and Necessity be amended so that its scope of authority would read as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1): BETWEEN  
POINTS AND PLACES IN SOUTH CAROLINA

RESTRICTED TO: TRANSPORTATION IN VEHICLES NOT TO EXCEED  
TWENTY-FOUR (24) FEET WITH A MAXIMUM CAPACITY OF 1553  
CUBIC FEET.

By letter dated February 26, 1997, the Commission's Executive Director instructed Apartment Movers to publish a prepared Notice of Filing in newspapers of general coverage. The purpose of the Notice of Filing was to inform interested parties of the Applicant's request and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Apartment Movers complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were received from Anthony P. Cook, President of Dale J. Cook Moving & Storage, Inc.; James Singleton, President of Singleton Moving & Storage, Inc.; and Dale J. Cook, President of Azalea Moving & Storage, Inc.

Prior to the hearing on this matter, the parties conducted discovery. Both the Applicant and Intervenors served Interrogatories and Requests to Produce.

A hearing on the Application was held on June 26, 1997, at 10:30 a.m., in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. Apartment Movers was represented by Bonnie D. Shealy, Esquire. Florence P. Belser, Staff Counsel, represented the Commission Staff. Anthony P. Cook and Dale J. Cook appeared pro se. James Singleton did not appear at the hearing. The Applicant presented the testimony of Kim C. Swanson, Brian Moore, and Carolyn Willette (by deposition de bene esse). Anthony P. Cook and Dale J. Cook testified on behalf of their

respective positions.

At the beginning of the hearing, counsel for Apartment Movers made an oral Motion to Dismiss James Singleton as an Intervenor in the proceeding. Counsel stated that she had served Interrogatories and Requests to Produce on Mr. Singleton and that Mr. Singleton had not responded. Further, counsel stated that she had served Mr. Singleton with a Motion to Compel which the Commission had granted by Commission Order No. 97-483 (dated June 5, 1997) and that Mr. Singleton had still failed to respond to her discovery requests. Counsel made her Motion to Dismiss pursuant to Rule 39(b) of the South Carolina Rules of Civil Procedure which provides for sanctions against a party for failing to comply with a discovery order and permits dismissing an action or any part thereof. Upon consideration of the Motion to Dismiss, the Commission determines that the Motion to Dismiss should be granted. Intervenor Singleton failed to respond by either answer or objection to Applicant's Interrogatories and Requests to Produce and further failed to respond after directed to do so by Commission Order. Further, Intervenor Singleton has failed to appear at the hearing on this matter. The Commission finds that dismissal from the proceeding is the appropriate sanction and hereby dismisses Mr. Singleton's intervention in this proceeding.

#### EVIDENCE OF RECORD

Kim Swanson, President of Apartment Movers, testified regarding the Application for amendment. Ms. Swanson stated she began business in 1988 as Pak Mail and that she provided labor

only. Upon recognizing a need for additional services, Ms. Swanson stated that she applied for Class E authority in 1995 and was found fit, willing, and able to operate as a mover of household goods. Ms. Swanson testified that she agreed to the restriction on her authority because she was targeting small moves and did not realize that 15 foot vans would not accommodate their needs. However, Ms. Swanson further testified that the 15 foot vans are not sufficient because large items such as wall units, refrigerators, and china cabinets will not stand up in the vans and must be placed on their sides. Ms. Swanson indicated that such packing does not allow for optimum use of space and causes additional trips to complete moves which increases time and costs for the customers.

Ms. Swanson testified that Apartment Movers made approximately 590 moves in 1996 with gross revenues of \$145,462, and net income of \$19,389. She stated that she receives referrals from other carriers and that she has made referrals to other carriers also. Ms. Swanson also stated that she receives referrals from customers. In support of the Application for amendment, Ms. Swanson offered into evidence (Hearing Exhibit No. 1) copies of comments received from customers regarding moves made by Apartment Movers. A review of the comments reveals that the customers are pleased with the work performed by Apartment Movers.

Ms. Swanson also introduced evidence that Apartment Movers had inquired about purchasing a larger vehicle and that Apartment Movers had knowledge of additional insurance requirements for a

larger vehicle. She also testified that the vehicles of Carl's Inc. are serviced by a local automotive service center and that the vehicles are in good mechanical condition.

Ms. Swanson also testified that changes have occurred in the Charleston area since she obtained her original authority. Ms. Swanson acknowledged that with the base closures, much of the military business is gone, but she also offered that many people are moving into the area and that her business is busy. Ms. Swanson also offered that if her request to amend her authority is granted that her target market of smaller moves will not change.

Brian Moore also testified on behalf of the Apartment Movers. Mr. Moore is employed by Apartment Movers and is responsible for customer services and sales. Mr. Moore testified that Apartment Movers receives approximately 125 calls per week and that approximately 50% of the calls are referrals. Mr. Moore stated that Apartment Movers had made approximately thirty (30) moves in the last six (6) days, that Apartment Movers had six moves (6) booked on the day of the hearing, and that Apartment Movers had six (6) moves booked for the day after the hearing. However, Mr. Moore also acknowledged that June was a busy month for moves. Mr. Moore offered that larger equipment would save time on moves thereby saving money for the customers.

Apartment Movers also introduced the deposition de bene esse of Carolyn Willette. Ms. Willette had used Apartment Movers for two prior moves, one involving an office move and one involving a residential move. Ms. Willette stated that the office

move included moving several large pieces and that several trips had to be made because the equipment was not large enough to hold all the furniture. She testified that the move took approximately a day and a half and that the service she received was excellent. Ms. Willette stated that the residential move also included some large pieces and that the move caused some inconvenience because the movers had to make several trips to complete the move. Once again, Ms. Willette stated that the service of Apartment Movers was excellent. Ms. Willette further stated that she would use Carl's Inc. again and that she would recommend Apartment Movers to others.

Anthony P. Cook, President of Dale J. Cook Moving & Storage, Inc., testified. Mr. A. Cook stated that he has twenty-five (25) employees, plus family members in his business. Mr. A. Cook stated that the Navy base closure has caused a decline in the moving business in the Charleston area, and he offered his opinion that additional movers are not needed in the Charleston area. Mr. A. Cook stated that June is the peak moving season and stated that he is turning away business because he is already booked. Mr. A. Cook introduced into evidence summaries of employee hours (time) and equipment use for 1995 and 1996. Mr. A. Cook stated that he could not keep his workers busy all year and that his workers wanted to work more than he could actually work them.

Dale J. Cook, President of Azalea Moving & Storage, Inc., also testified in opposition to the Application. Mr. J. Cook also offered that there was not a need for additional movers in the

Charleston area. He stated that the base closure created a spike in business which has since declined. Mr. J. Cook introduced into evidence summaries of employee hours and equipment use.

APPLICABLE LAW

S.C. Code Ann. §58-23-590 (Supp. 1996) provides in relevant part as follows:

- (C) The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the commission that:
  - (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
  - (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirement of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

26 S.C. Code Regs. 103-133 (filed on June 23, 1997, as an Emergency Regulation and effective upon the date of filing) provides as follows:

**103-133. Proof Required to Justify Approving an Application.**

- 1. PC&N (Household Goods or Hazardous Waste for Disposal).

An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous

waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing and able to appropriately perform the proposed service, and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses. A shipper witness is a customer (in an expansion of authority case) or potential customer for the applicant's proposed service in the area requested in the application. The Commission will not open a hearing on an application for a Class E Certificate for authority to transport household goods or hazardous waste for disposal unless such shipper witnesses are present for the hearing or unless arrangements have been made to present their testimony at the hearing through a deposition de bene esse. If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the Application....

#### DISCUSSION

Under S.C. Code Ann §58-23-590 (Supp. 1996), the burden of proof lies with the Applicant to demonstrate that it is fit, willing, and able to perform the services for which it seeks authority and to demonstrate that the proposed services are required by the present public convenience and necessity. The instant case concerns the expansion of the scope of authority of a carrier already operating under a Certificate of Public Convenience and Necessity. By Commission Order No. 95-1554 (dated September 20, 1995), Apartment Movers was granted authority to operate as a mover of household goods and was subsequently issued Certificate of Public Convenience and Necessity No. 9668. In Order No. 95-1554, the Commission found that Apartment Movers was



fit, willing, and able to perform the services for which it sought authority.

In the instant proceeding, Apartment Movers demonstrated that it was prepared to purchase or lease additional equipment and demonstrated that it had inquired about the cost of additional equipment (Hearing Exhibit No. 2) as well as investigated the cost of the additional insurance to cover the equipment. Further, Ms. Swanson testified that Apartment Movers would either rent or purchase the larger vehicle which Apartment Movers seeks to add to its authority. Additionally, the testimony of Ms. Swanson reveals that she is familiar with the laws and regulations governing the operation of household goods carriers in this state, and Ms. Swanson stated that Apartment Movers would abide by the applicable laws and regulations.

In addition to the testimony of Ms. Swanson, Apartment Movers introduced a number of comments made by shippers who had used Apartment Movers for moving services. (See, Hearing Exhibit No. 1) These comments were made on forms which were a part of the documentation and receipt for services and are a record which Apartment Movers keeps in the normal course of its business operations. As a business record kept in the normal course of business, the comments were accepted into evidence under the Business Records Act. A review of the comments reveals that the people who have used Apartment Movers services have found the services rendered by Apartment Movers to be performed in an efficient and competent manner and that the public is satisfied

with the manner in which Apartment Movers conducts its moving services.

Based on the evidence of record, the Commission finds that Apartment Movers is fit, willing, and able to perform the services for which it seeks authority.

To establish that the proposed service sought by the Applicant is required by the public convenience and necessity, Apartment Movers presented the testimony, by deposition, of Carolyn C. Willette. (See, Hearing Exhibit No. 4) Ms. Willette's testimony revealed that she had used the services of Apartment Movers and that she was extremely pleased with the services provided by Apartment Movers. However, Ms. Willette also stated that had Apartment Movers been allowed to use larger equipment, that the moves would have been more efficient and less inconvenient.

Ms. Swanson testified that Apartment Movers has refused jobs due to the restriction on her authority and that she has refused jobs due to being too booked to handle jobs. Ms. Swanson stated that since she received operating authority in 1995, that changes have occurred in the Charleston area, such as the military base closing, but she further stated that a lot of people are moving into the area.

Mr. Moore, who handles customer service and sales for Apartment Movers, testified that Apartment Movers receives more calls for service than they can handle. Mr. Moore also stated that larger equipment would allow Apartment Movers to serve the

public in a more efficient manner as the larger equipment would save time on moves by reducing the need for additional trips. Mr. Moore also indicated that time savings would result in savings of money to the customer.

Upon consideration of this matter and the evidence of record before it, the Commission finds that Apartment Movers has demonstrated to the satisfaction of the Commission that enlarging the scope of authority held by Apartment Movers is required by the public convenience and necessity. The Commission concludes that the public convenience and necessity require approval of an enlarged scope of authority for Apartment Movers and that the public will be better served by granting an enlarged scope of authority to Apartment Movers. Therefore, the Commission concludes that it is in the public interest to remove vehicle size restrictions from the scope of authority held by Apartment Movers. The Commission concludes and so finds that Apartment Movers authority should be enlarged as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):  
BETWEEN POINTS AND PLACES IN SOUTH CAROLINA

IT IS THEREFORE ORDERED THAT:

1. The request of Apartment Movers to amend its Certificate of Public Convenience and Necessity No. 9668 is approved.
2. All vehicle size restrictions heretofore placed on the Certificate of Public Convenience and Necessity No. 9668 held by Apartment Movers are removed.
3. The Motion of Apartment Movers to dismiss James Singleton

as an Intervenor is granted.

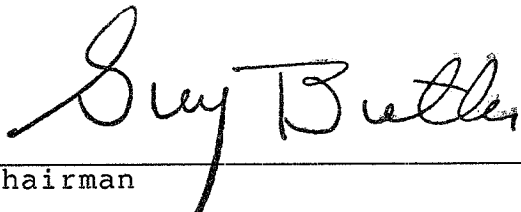
4. The Applicant file the proper license fees and other information required by S.C. Code Ann. §58-23-10 et seq. (1976), as amended, and by Reg.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26, (1976), as amended, within sixty (60) days of receipt of this Order, or within such additional time as may be authorized by the Commission.

5. Upon compliance with S.C. Code Ann §58-23-10, et seq (1976), as amended, and the applicable provisions of R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, an amended certificate shall be issued to the Applicant authorizing the motor carrier services granted herein.


6. Prior to compliance with such requirements and receipt of the certificate, the motor carrier services authorized herein may not be provided.

7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director  
(SEAL)